

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MORRIS SMITH,

Plaintiff,

v.

WARDEN ROWLEY, *et al.*,

Defendants.

No. 4:18-CV-00464

(Judge Brann)

(Magistrate Judge Carlson)

**ORDER**

**MARCH 22, 2019**

In February 2019, Magistrate Judge Martin C. Carlson issued a Report and Recommendation recommending that this Court grant the motion to dismiss filed by Defendants John Rowley, Julie Probst, Paul Risley, Clinton County Correctional Facility, Clinton County Commissioners, and Clinton County (collectively “Moving Defendants”). (Doc. 25). Magistrate Judge Carlson later issued a corrected Report and Recommendation, which fixed a minor pagination issue. (Doc. 30).

Smith filed timely objections (Doc. 27), asserting that he did not initially respond to Moving Defendants’ motion to dismiss due to delays in receiving the motion, and noting that he timely complied with Magistrate Judge Carlson’s January 17, 2019, Order directing Smith to file a response to the motion to dismiss, but the response was not delivered until after the Report and Recommendation issued.

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error. Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed). Conversely, “[i]f a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” *Equal Emp’t Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72.31.

Because Smith objected to the recommendation that his claims against Moving Defendants be dismissed for failure to comply with a court order or respond to the motion to dismiss, that portion of the recommendation is subject to de novo review. *City of Long Branch*, 866 F.3d at 99. Smith did not, however, object to the conclusion that his claims are without merit, and that portion of the recommendation is therefore reviewed only for clear error. *See Snyder v. Bender*, 548 F. App’x 767, 771 (3d Cir. 2013) (noting that district courts need not conduct de novo review of portions of recommendation to which no party files specific objections).

Based on Smith's objections, it appears that he did not intentionally fail to comply with a court order or intend to abandon this action. Although dismissal may be warranted based on the undue delay in Smith's response to the motion to dismiss, in light of Smith's pro se status, the Court will examine the underlying claims. Nevertheless, the Court finds no error—clear or otherwise—in Magistrate Judge Carlson's conclusion that Smith failed to adequately state a claim against Moving Defendants. Consequently, it is hereby ordered that:

1. Magistrate Judge Martin C. Carlson's Report and Recommendation (Doc. 25) is **ADOPTED in part**;
2. Moving Defendants' motion to dismiss (Doc. 13) is **GRANTED**; and
3. All claims against Moving Defendants are **DISMISSED**.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann

United States District Judge